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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 93-36
Tariff Filing Requirements	)	
for Nondominant Common Carriers	)	
	)	

COMMENTS OF TELOCATOR

Telocator, the Personal Communications Industry Association, herewith submits its reply comments in the

I. RELIEF FROM FEDERAL TARIFFING REQUIREMENTS IS IMPERATIVE FOR RCCs

A. Longstanding Commission Policy Exempting RCCs From Tariffing Obligations Demonstrates the Lack of Need For Any Such Requirements

As early as 1965, the Commission announced its policy of relieving most RCCs providing message relay or signalling service from federal tariffing obligations due to the inherently local nature of paging service.[4] The FCC determined that RCCs with a reliable service area that does not extend beyond the borders of the state in which the base station is located need no longer file tariffs.[5] Further, the Commission declared that even those RCCs with reliable service areas extending beyond state borders are not required to file tariffs with the FCC if the RCC service is subject to state or local regulation.[6]

Although the market served by RCCs has expanded substantially since the Commission's adoption of this policy, the FCC has consistently recognized that RCCs, even if providing interstate or nationwide service, should not be subject to federal tariffing requirements. In 1984, the

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[4] FCC Announces New Policy Regarding Filing of Mobile Tariffs, FCC 65-805-72457 (Sept. 15, 1965) (Public Notice), reprinted in, FCC Policy Regarding Filing of Tariffs for Mobile Service, 53 F.C.C. 2d 579 (1975).

[5] Id.

[6] Id. (relying on 47 U.S.C. § 221(b)).

Commission determined that tariff regulation was not necessary for nationwide network paging service.[7] Similarly, in 1986 the FCC found that RCCs providing interstate service possess insufficient market power to charge unlawful rates or unjustly discriminate and therefore constitute non-dominant carriers for purposes of Title II regulation.[8]

These decisions illustrate that, over the past three decades, the FCC consistently has recognized that RCCs are a special class of non-dominant carriers that need not be

Commission's treatment of any other non-dominant carriers in this proceeding.

B. The Radio Common Carrier Paging Market Is Intensely Competitive

The Commission's actions in reducing regulatory burdens and barriers to entry for RCCs have created a highly competitive marketplace for paging services.[10] In any given area, as many as 40 RCCs may operate in the 900 MHz band alone. Paging channels also are available in the low band VHF (30-50 MHz), high band VHF (148-174 MHz), UHF (450-512 MHz), and FM subcarrier (88-108 MHz) frequency bands. Further, RCCs face substantial competition from for-profit private carrier paging companies ("PCPs") and from shared and individual private radio paging licensees.[11] Indeed, this competitive environment has consistently forced the price of paging services downward and has encouraged RCCs to develop innovative service offerings, such as advanced messaging services.

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[10] Preemption of State Entry, 59 Rad. Reg. 2d (P & F) at 1533.

[11] As detailed below, recent Commission proposals to eliminate service restrictions on PCPs indicate that such competition soon will be even greater. See infra section III.

C. The Application of Traditional Tariffing Requirements To RCCs Would Undermine Competition in the Paging Marketplace

The vigorously competitive state of the paging marketplace would be harmed substantially by the imposition of federal tariffing obligations on RCCs. As the Commission's extensive record in the Competitive Carrier proceeding illustrates, traditional tariff regulation of non-dominant carriers like RCCs inevitably will have substantial detrimental consequences for a competitive industry.[12] Such regulation would raise barriers to entry, impair RCCs' ability to respond to the paging market and new customer demands, discourage service innovation, and inhibit price competition.[13] In the wake of the AT&T v. FCC decision, the Commission must act affirmatively to preserve competition in the paging marketplace by minimizing the adverse impact of traditional tariffing requirements.

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[12] See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor ("Competitive Carrier"), 91 F.C.C. 2d 59, 65 (1982) (Second Report and Order), recon., 93 F.C.C.2d 54 (1983).

[13] See id. Congress also has recognized that RCCs should not be subject to tariffing requirements. See H.R. Conf. Rep. No. 97-765, 97th Cong., 2d Sess., at 56 (1982), reprinted in 1982 U.S.C.C.A.N. 2237, 2300 ("[n]othing in [amended subsection 332] shall be construed as prohibiting the Commission from forebearing from regulating common carrier land mobile services.").

II. THE APPLICATION OF TRADITIONAL FEDERAL TARIFFING REQUIREMENTS TO RCCs WOULD CREATE AN ANTICOMPETITIVE REGULATORY DISPARITY BETWEEN RCCs AND PCPs

The paging market includes both common carriers, or RCCs, and private carriers, or PCPs. Historically, this divergent regulatory regime reflected the different markets served by RCCs and PCPs. Today, however, these markets have converged and RCC and PCP services are essentially fungible. In view of the current robustly competitive marketplace, the Commission must seek to reduce, rather than exacerbate, the regulatory disparities between RCCs and PCPs. While PCPs are not affected by the AT&T v. FCC decision, RCCs are exposed to the risk of being compelled to file tariffs. This disparity could cause damaging competitive dislocations.

For example, the pre-effective notice period associated with traditional tariffing requirements would force RCCs to divulge rate plans to their competitors prior to the rate becoming effective, thereby enabling competitors to

III. TELOCATOR SUPPORTS THE COMMISSION'S PROPOSAL TO MINIMIZE FEDERAL TARIFF FILING REQUIREMENTS TO THE GREATEST EXTENT POSSIBLE CONSISTENT WITH STATUTORY OBLIGATIONS

As the Commission states in its Notice, the AT&T v. FCC court, while holding permissive detariffing unlawful, did not object to the Commission's policy goal of minimizing tariff regulation of non-dominant carriers.[14] Accordingly, the FCC has proposed to reduce and streamline the tariff filing requirements for those carriers to the extent allowable under the Communications Act. If RCC tariffs are deemed legally required, Telocator strongly supports the proposed rule changes as well within the Commission's authority.

Section 203(b)(2) of the Communications Act states in relevant part that "[t]he Commission may, in its discretion and for good cause shown, modify any requirement made by or under the authority of this Section . . . ."[15] The Commission has determined that "this Section" clearly refers to the entire Section 203.[16] Moreover, the AT&T v. FCC decision does not affect the Commission's ability to make

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[14] Notice, at ¶ 7.

[15] 47 U.S.C. § 203(b)(2) (1991).

[16] See, e.g., Further Notice of Proposed Rulemaking,

"circumscribed alterations" upon a proper public interest showing.[17]

Telocator endorses the Commission's proposed rules as an appropriate means to lessen the burden of tariff regulation on non-dominant carriers. By reducing the pre-effective notice period to "not less than one day," allowing tariffs to contain banded rates in satisfaction of Section 203(a), and introducing necessary flexibility into the rules governing technical form and filing procedures, the FCC will minimize the burden of these features of the requirements consistent with well established policy findings.[18]

Telocator urges the Commission, however, to modify proposed Section 61.22 of the Commission's rules, which would streamline the content requirements for tariff filings. That section now states only that "[t]he tariff must contain the

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[17] AT&T v. FCC, 978 F.2d at 736 (citing MCI Telecommunications Corp. v. FCC, 765 F.2d 1186, 1192 (D.C. Cir. 1985)).

[18] Telocator notes that persuasive precedent exists for the Commission's possession of legal authority to allow carriers to file banded rates. The D.C. Circuit recently upheld the decision of the Federal Energy Regulatory Commission ("FERC") to permit a system of banded rates. See Associated Gas Distributors v. FERC, 824 F.2d 981, 1007 (D.C. Cir. 1987), cert. denied, 485 U.S. 1006 (1988). Because both the Natural Gas Act and the Communications Act derive from the Interstate Commerce Act, FERC operates under a legislative mandate similar to Section 203. Therefore, the D.C. Circuit's decision is highly probative of the FCC's power to exercise the same discretionary authority. See generally Comments of BellSouth, Policies and Rules Pertaining to the Regulation of Cellular Carriers, RM No. 8179 (filed March 19, 1993).

carrier's name, and the information required by Section 203(c) of the Act."[19] While Telocator endorses the policy underlying this text, to achieve its intended purpose the rule should be clarified. Specifically, Telocator requests that the FCC set out in greater detail the minimum information it believes to be required by Section 203(c). Such an authoritative construction will reduce unnecessary litigation by guiding carriers in complying with the tariff filing requirements and will be entitled to substantial deference on judicial review.

V. CONCLUSION

For the reasons stated above, Telocator urges the Commission to adopt rules that minimize the adverse impact of the AT&T v. FCC decision on RCCs. The FCC has long recognized that tariffing requirements are inconsistent with the workings of the competitive paging marketplace. Clearly, there can be no justification for abandoning that sound policy now to any extent greater than that required by law.

Respectfully submitted,

TELOCATOR, THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of March, 1993, I caused copies of the foregoing "Comments of Telocator" to be hand-delivered to the following:

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